

HOUSE BILL No. 1533

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-3.1-15-1; IC 20-7.5-1.

Synopsis: Subjects of educational discussion and bargaining. Removes the requirements that a school employer: (1) discuss certain items relating to school employment, teaching methods, textbooks, and students; and (2) bargain collectively regarding hours of employment; with the exclusive representative of certificated school employees of the school employer. Removes the requirement that items included in the 1972-1973 collective bargaining agreement between an employer school corporation and the school employee organization continue to be subjects for collective bargaining. Provides that a collective bargaining agreement in effect on June 30, 2005, is not affected by the removal of these requirements. Makes conforming amendments. Removes references to repealed sections of the administrative code.

Effective: July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Education.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1533

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-3.1-15-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. To provide the board
3 with the necessary flexibility and resources to carry out this article, the
4 following apply:

5 (1) The board may eliminate or modify existing policies, create
6 new policies, and alter policies from time to time, subject to this
7 article and the plan developed under IC 20-3.1-7.

8 (2) Beginning on July 1, 2001, IC 20-7.5 applies to the school
9 city. ~~however, the provision of IC 20-7.5-1-5(a) that requires any~~
10 ~~items included in the 1972-1973 agreements between an employer~~
11 ~~school corporation and an employee organization to continue to~~
12 ~~be bargainable does not apply to the school city.~~

13 (3) The board of school commissioners may waive the following
14 statutes and rules for any school in the school city without the
15 need for administrative, regulatory, or legislative approval:

16 (A) The following rules concerning curriculum and
17 instructional time:



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- 1 511 IAC 6.1-3-4
 2 511 IAC 6.1-5-0.5
 3 511 IAC 6.1-5-1
 4 511 IAC 6.1-5-2.5
 5 511 IAC 6.1-5-3.5
 6 511 IAC 6.1-5-4
 7 (B) The following ~~rules~~ **rule** concerning pupil/teacher ratios:
 8 ~~511 IAC 6-2-1(b)(2)~~
 9 511 IAC 6.1-4-1
 10 (C) The following statutes and rules concerning textbooks, and
 11 rules adopted under the statutes:
 12 IC 20-10.1-9-1
 13 IC 20-10.1-9-18
 14 IC 20-10.1-9-21
 15 IC 20-10.1-9-23
 16 IC 20-10.1-9-27
 17 IC 20-10.1-10-1
 18 IC 20-10.1-10-2
 19 511 IAC 6.1-5-5
 20 (D) The following ~~rules~~ **rule** concerning school principals:
 21 ~~511 IAC 6-2-1(c)(4)~~
 22 511 IAC 6.1-4-2
 23 (E) 511 IAC 2-2, concerning school construction and
 24 remodeling.
 25 (4) Notwithstanding any other law, a school city may do the
 26 following:
 27 (A) Lease school transportation equipment to others for
 28 nonschool use when the equipment is not in use for a school
 29 city purpose.
 30 (B) Establish a professional development and technology fund
 31 to be used for:
 32 (i) professional development; or
 33 (ii) technology, including video distance learning.
 34 (C) Transfer funds obtained from sources other than state or
 35 local government taxation among any account of the school
 36 corporation, including a professional development and
 37 technology fund established under clause (B).
 38 (5) Transfer funds obtained from property taxation among the
 39 general fund (established under IC 21-2-11) and the school
 40 transportation fund (established under IC 21-2-11.5), subject to
 41 the following:
 42 (A) The sum of the property tax rates for the general fund and

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the school transportation fund after a transfer occurs under this subdivision may not exceed the sum of the property tax rates for the general fund and the school transportation fund before a transfer occurs under this clause.

(B) This clause does not allow a school corporation to transfer to any other fund money from the debt service fund (established under IC 21-2-4).

SECTION 2. IC 20-7.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter:

(a) "School corporation" means ~~any~~ a local public school corporation established under Indiana law and, in the case of public vocational schools or schools for children with disabilities established or maintained by two (2) or more school corporations, shall refer to ~~such~~ those schools.

(b) "Governing body" means:

(1) the board or commission charged by law with the responsibility of administering the affairs of the school corporation; or

(2) the body that administers a charter school established under IC 20-5.5.

(c) "School employer" means:

(1) the governing body of ~~each~~ a:

(A) school corporation; or

(B) charter school established under IC 20-5.5; and

(2) ~~any~~ a person or persons authorized to act for the governing body of the school employer in dealing with its employees.

(d) "Superintendent" shall mean:

(1) the chief administrative officer of ~~any~~ a:

(A) school corporation; or

(B) charter school established under IC 20-5.5; or

(2) ~~any~~ a person ~~or persons~~ designated by the officer or by the governing body to act in the officer's behalf in dealing with school employees.

(e) "School employee" means ~~any~~ a full-time certificated person in the employment of the school employer. A school employee shall be considered full time even though the employee does not work during school vacation periods, and accordingly works less than a full year. There shall be excluded from the meaning of school employee supervisors, confidential employees, employees performing security work and noncertificated employees.

(f) "Certificated employee" means a person:

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(1) whose contract with the school corporation requires that the person hold a license or permit from the state board of education or a commission ~~thereof~~ as provided in IC 20-6.1; or

(2) who is employed as a teacher by a charter school established under IC 20-5.5.

(g) "Noncertificated employee" means ~~any~~ a school employee whose employment is not dependent upon the holding of a license or permit as provided in IC 20-6.1.

(h) "Supervisor" means ~~any~~ an individual who has:

(1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline school employees;

(2) responsibility to direct school employees and adjust their grievances; or

(3) responsibility to effectively recommend the action described in subdivisions (1) through (2);

that is not ~~of a~~ merely routine or clerical ~~in~~ nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporation-wide responsibilities, principals and vice principals, and department heads who have responsibility for evaluating teachers.

(i) "Confidential employee" means a school employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees would make the confidential employee's membership in a school employee organization incompatible with the employee's official duties.

(j) "Employees performing security work" means ~~any~~ a school employee whose primary responsibility is the protection of personal and real property owned or leased by the school corporation or who performs police or quasi-police powers.

(k) "School employee organization" means any organization which has school employees as members and one (1) of whose primary purposes is representing school employees in dealing with ~~their the~~ school employer, and includes ~~any~~ a person or persons authorized to act on behalf of ~~such those~~ organizations.

(l) "Exclusive representative" means the school employee organization which has been certified for the purposes of this chapter by the board or recognized by a school employer as the exclusive representative of the employees in an appropriate unit as provided in section 10 of this chapter, or the person ~~or persons~~ duly authorized to act on behalf of ~~such the~~ representative.

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(m) "Board" means the Indiana education employment relations board provided by this chapter.

(n) "Bargain collectively" means the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith with respect to items enumerated in section 4 of this chapter and to execute a written contract incorporating any agreement relating to such matters. ~~Such~~ **The** obligation shall not include the final approval of ~~any~~ **a** contract concerning these or ~~any~~ other items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other.

(o) "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss; to provide meaningful input; to exchange points of view, with respect to items enumerated in section 5 of this chapter. This obligation shall not, however, require either party to enter into a contract; to agree to a proposal; or to require the making of a concession. A failure to reach an agreement on any matter of discussion shall not require the use of any part of the impasse procedure, as provided in section 13 of this chapter. ~~Neither~~ The obligation to bargain collectively ~~nor to discuss~~ **any a** matter shall **not** prevent **any a** school employee from petitioning the school employer, the governing body, or the superintendent for a redress of the employee's grievances either individually or through the exclusive representative, nor shall ~~either such the~~ obligation prevent the school employer or the superintendent from conferring with **any a** citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

(p) "Strike" means concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, without the lawful approval of the school employer, or in ~~any a~~ concerted manner interfering with the operation of the school employer for any purpose.

(q) "Deficit financing" with respect to ~~any a~~ budget year shall mean expenditures in excess of money legally available to the employer.

SECTION 3. IC 20-7.5-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~Duty to Bargain Collectively and Discuss~~. On and after January 1, 1974, school

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employers and school employees shall have the obligation and the right to bargain collectively the items set forth in section 4 **of this chapter** ~~the right and obligation to discuss any item set forth in Section 5~~ and shall enter into a contract embodying any of the matters on which they have bargained collectively. No contract may include provisions in conflict with:

- (a) **(1)** any right or benefit established by federal or state law;
- (b) **(2)** school employee rights as defined in section 6(a) of this chapter; or
- (c) **(3)** school employer rights as defined in section 6(b) of this chapter.

It shall be unlawful for a school employer to enter into any agreement that would place ~~such the~~ employer in a position of deficit financing as defined in this chapter, and ~~any a~~ contract which provides for deficit financing ~~shall be~~ is void to that extent and ~~any an~~ individual teacher's contract executed in accordance with such ~~a~~ contract ~~shall be~~ is void to ~~such that~~ extent.

SECTION 4. IC 20-7.5-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. ~~Subjects of Bargaining.~~ A school employer shall bargain collectively with the exclusive representative on the following: salary, wages, ~~hours~~, and salary and wage related fringe benefits, including accident, sickness, health, dental, or other benefits under IC 20-5-2-2 that are subjects of bargaining on July 1, 2001. A contract may also contain a grievance procedure culminating in final and binding arbitration of unresolved grievances, but ~~such~~ binding arbitration shall have no power to amend, add to, subtract from, or supplement provisions of the contract.

SECTION 5. IC 20-7.5-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) ~~A school employer shall discuss with the exclusive representative of certificated employees, and may but shall not be required to bargain collectively, negotiate, or enter into a written contract concerning or be subject to or enter into impasse procedures on the following matters:~~

- (1) Working conditions, other than those provided in section 4 of this chapter.
- (2) Curriculum development and revision.
- (3) Textbook selection.
- (4) Teaching methods.
- (5) Hiring, promotion, demotion, transfer, assignment, and retention of certificated employees, and changes to any of the requirements set forth in IC 20-6.1-4.
- (6) Student discipline.

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(7) Expulsion or supervision of students.

(8) Pupil-teacher ratio.

(9) Class size or budget appropriations.

However, any items included in the 1972-1973 agreements between any employer school corporation and the employee organization shall continue to be bargainable.

(b) Nothing shall prevent a superintendent or his designee from making recommendations to the school employer.

(c) This chapter may not be construed to limit the rights of the school employer and the exclusive representative to mutually agree to the matters authorized under IC 20-6.1-4-14.5.

SECTION 6. IC 20-7.5-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) School employees shall have the right to form, join, or assist employee organizations, to participate in collective bargaining with school employers through representatives of their own choosing, and to engage in other activities, individually or in concert for the purpose of establishing, maintaining, or improving salaries, wages, hours, salary and wage related fringe benefits, and other matters as defined in ~~sections~~ **section 4 and 5** of this chapter. A school employee may not be required to join or financially support through the payment of fair share fees, representation fees, professional fees, or other fees, a school employee organization. A rule, regulation, or contract provision requiring financial support from a school employee to a school employee organization is void.

(b) School employers shall have the responsibility and authority to manage and direct ~~in~~ **on** behalf of the public the operations and activities of the school corporation to the full extent authorized by law. ~~Such~~ **This** responsibility and activity shall include ~~but not be limited to~~ the right of the school employer to:

- (1) direct the work of its employees;
- (2) establish policy through procedures established in ~~sections~~ **section 4 and 5** of this chapter;
- (3) hire, promote, demote, transfer, assign, and retain employees through procedures established in ~~sections~~ **section 4 and 5** of this chapter;
- (4) suspend or discharge its employees in accordance with applicable law through procedures established in ~~sections~~ **section 4 and 5** of this chapter;
- (5) maintain the efficiency of school operations;
- (6) relieve its employees from duties because of lack of work or other legitimate reason through procedures established in ~~sections~~

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section 4 ~~and~~ 5 of this chapter; and

(7) take actions necessary to carry out the mission of the public schools as provided by law.

SECTION 7. IC 20-7.5-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~Unfair Practices.~~

(a) It shall be an unfair practice for a school employer to:

(1) interfere with, restrain or coerce school employees in the exercise of the rights guaranteed in Section 6 of this chapter.

(2) dominate, interfere or assist in the formation or administration of ~~any~~ a school employee organization or contribute financial or other support to it; provided, that subject to rules and regulations made by the governing body, a school employer may permit school employees to confer with the school employer or with ~~any~~ a school employee organization during working hours without loss of time or pay;

(3) encourage or discourage membership in any school employee organization through discrimination in regard to hiring or tenure of employment or any term or condition of employment;

(4) discharge or otherwise discriminate against a school employee because ~~he~~ the employee has filed a complaint, affidavit, petition, or given any information or testimony under this chapter;

(5) refuse to bargain collectively ~~or discuss~~ with an exclusive representative as required by any provisions of this chapter;

(6) fail or refuse to comply with any provision of this chapter.

(b) It shall be an unfair practice for a school employee organization or its agents to:

(1) interfere with, restrain or coerce:

~~(a)~~ (A) school employees in the exercise of the rights guaranteed by this chapter; or

~~(b)~~ (B) a school employer in the selection of its representatives for the purpose of bargaining collectively, discussing or adjusting grievances.

This paragraph shall not impair the right of a school employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

(2) cause or attempt to cause a school employer to discriminate against an employee in violation of subsection (a);

(3) refuse to bargain collectively with a school employer, if the school employee organization is the exclusive representative;

(4) fail or refuse to comply with ~~any~~ a provision of this chapter.

(c) Nothing ~~herein~~ shall ~~in any way~~ restrict the right of either the school employer or the school employee organization to bring suit for

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1 specific performance ~~and/or~~ or breach of performance, **or both**, of a
2 collective bargaining contract in ~~any~~ a court ~~having~~ with jurisdiction.
3 thereof.

4 SECTION 8. [EFFECTIVE JULY 1, 2005] **(a) This act does not**
5 **apply to or abrogate a collective bargaining agreement in effect on**
6 **June 30, 2005.**

7 **(b) This SECTION expires July 1, 2007.**

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